



**Date:** March 27, 2013

**To:** Mayor and City Council  
**From:** Patrick Baker, City Attorney  
**Subject:** Amendments to City Code Regulating Discharge and Possession of Dangerous Weapons

### **Executive Summary**

Durham City Code Chapter 46, "Public Safety," Article II "Weapons," currently contains eight ordinances, codified in Sections 46-21 through 46-28, which purport to regulate the discharge and possession of dangerous weapons, including firearms, within the City. Many provisions of these ordinances attempt to regulate firearms in a manner that is no longer authorized by State law. In addition, some authority to regulate firearms is not being exercised in the existing ordinances. The proposed amendments to City Code Sections 46-21 through 46-28 will revise the existing code provisions so that, by the operation of State laws in conjunction with the City Code, the discharge, display and concealment of firearms and other dangerous weapons upon City property will be regulated in the manner summarized in Attachment 2.

### **Recommendation**

Staff recommends approval of the City Code amendments set forth in Attachment 1.

### **Background**

A municipality may regulate the possession of dangerous weapons (such as knives, slingshots, metallic knuckles, etc.) on city property. See *generally* N.C.G.S. §160A-174(a). However, the General Assembly has declared that the regulation of firearms is an issue of general, statewide concern, and therefore, has preempted such regulation by local governments except to the extent provided for by State law.

There are three State statutes which prescribe a municipality's authority by ordinance to regulate firearms. North Carolina General Statute (N.C.G.S.) §160A-189 allows a city to regulate, restrict or prohibit the discharge of firearms within the city, and to regulate the display of firearms on streets, sidewalks, alleys or other public property. N.C.G.S. §14-409.40 contains the general firearms preemption provisions, but also provides that such provisions do not prohibit municipalities from application of their authority under N.C.G.S. §160A-189, including prohibiting the possession of firearms in public owned buildings, on the grounds or parking areas of those buildings, or in public parks or recreation areas except that nothing shall prohibit a person from storing a firearm within a motor vehicle while the vehicle is on these grounds or areas. The third statute is N.C.G.S. §14-415.23 which, until recently, allowed a municipality to adopt an ordinance to permit the posting of a prohibition against carrying a concealed handgun on local government buildings, their appurtenant premises, and parks. Effective December 1, 2011, this statute was amended so that local governments are no longer authorized to generally prohibit the carrying of concealed handguns in parks. The new law provides that a unit of local government may adopt an ordinance to permit the

posting of a prohibition against carrying a concealed handgun on local government buildings, their appurtenant premises, and specifically identified recreational facilities. The term recreational facility is defined to include only: a playground, an athletic field, a swimming pool, or an athletic facility. If a unit of local government adopts such an ordinance with regard to recreational facilities, the statute provides that a concealed handgun permittee must be allowed nonetheless to secure a handgun in a trunk, glove box, or other enclosed compartment or area within or on a locked motor vehicle.

### **Issues and Analysis**

Section 46-21. "Discharging firearms-Generally." With limited exceptions, this ordinance currently prohibits the discharge of a firearm or other deadly weapon within the City. For clarification purposes, the types of weapons covered by the ordinance have been listed and an exception allowing the discharge of weapons on State designated game lands has been added.

Section 46-22. "Same-Prohibited on certain city property." This ordinance currently prohibits the possession of dangerous weapons, including firearms, on city property. City property is defined as essentially all public property owned by the city or leased by the city as lessee. However, it specifically excludes streets and sidewalks. There are several enumerated exceptions to the ordinance, one of which is a concealed handgun lawfully carried by a person pursuant to a permit. Some provisions of this ordinance are not in compliance with the requirements of State law, some are duplicative of State law, and some fail to regulate firearms to the extent allowed by State law.

"Possession" is a broad term. It may involve carrying a weapon openly or concealed. A municipality has the authority to prohibit the open carrying (display) of any type of dangerous weapon, including a firearm, on any city property. The only exception is that a person must be allowed to store a firearm in a private vehicle while that vehicle is on city property. Current Sec. 46-22 fails to prohibit the open carrying of a firearm on city streets and sidewalks. There are no other ordinances (unless the street has been closed for a fair or special event) or State laws which prohibit such conduct, despite the fact that such a prohibition is within the city's regulatory authority. Proposed revisions to Sec. 46-22 would prohibit the display of dangerous weapons on all city property, including its streets and sidewalks. Current Sec. 46-22 also fails to include any exceptions for storing a firearm in a private vehicle that is on city property, as is required by State law. Proposed revisions to Sec. 46-22 would allow such storage but, for the safety of the general public, regulates the manner in which the storage occurs. Long guns must be stored in a locked gun rack since it may be difficult, or even impossible, in some vehicles to transport such weapons lawfully concealed. Because a permit may be obtained to carry a handgun concealed, handguns must be stored in a trunk, glove box or other closed compartment in or on a locked vehicle. Regarding concealed possession of a dangerous weapon, there is no need for an ordinance to prohibit the carrying of a concealed weapon (other than a firearm pursuant to a permit) on city property because State law already prohibits such conduct. Thus, current Sec. 46-22 unnecessarily duplicates existing State law to the extent that it prohibits possession of a dangerous weapon on city property and that possession occurs in a concealed manner. State law only allows a person to obtain a permit to carry a handgun concealed. A municipality is authorized to adopt an ordinance to permit the posting of a prohibition against carrying a lawfully possessed concealed handgun on local government buildings, their appurtenant premises, and specifically identified recreational facilities. If a person with a valid concealed handgun permit

carries the weapon onto such posted property, the person will be in violation of State law. However, there is no current ordinance within the Durham City Code which authorizes the posting of a prohibition against carrying a concealed handgun on any city property. In fact, current Sec. 46-22 specifically excludes persons carrying a concealed handgun with a permit from its prohibitions. Thus, although the City has the ability to regulate the possession of concealed handguns carried pursuant to a permit on at least some of its property, the current ordinances fail to exercise this authority. Proposed revisions to Sec. 46-22 would regulate the carrying of concealed weapons on city property to the extent allowed by statute, without duplicating State laws.

Sec. 46-23. "Display of firearms or other dangerous weapons at public place or public assembly prohibited." This ordinance currently prohibits the display of a firearm or dangerous weapon at a public place or public assembly. "Public assembly" is defined as "any gathering where the public has been invited, without payment of an admission fee or charge, for the purpose of viewing or participating in some function or event..." "Public place" is defined as "privately owned property or part thereof which is commonly made available for the use and enjoyment of the general public..." To the extent a public assembly occurs on city property, display and possession of weapons would be regulated by revised Sec. 46-22. A municipality has no authority to regulate the display of dangerous weapons on private property. However, a person who owns or controls private property may request that any person displaying or possessing a weapon leave the premises and, failure to do so would constitute the offense of trespass. For these reasons, it is recommended that current Sec. 46-23 be deleted.

Sec. 46-24. "Public streets temporarily closed for street fairs and other special events." This ordinance currently makes it unlawful to possess or use any dangerous weapon on a public street that has been closed for a street fair or other special event. Sec. 46-21, "Discharging firearms-Generally," in addition to various State statutes, already prohibit the use of firearms or other dangerous weapons within the city. If Sec. 46-22 is revised as recommended, it will, along with state law, regulate the display and possession of firearms and dangerous weapons on all city streets regardless of whether or not the street is closed for a fair or other special event. Therefore, it is recommended that current Sec. 46-24 be deleted.

Sec. 46-25. "Prohibition on possession of weapons on public mass transportation vehicle." This ordinance currently makes it unlawful for a person to use or possess a dangerous weapon while aboard a public mass transportation vehicle. Sec. 46-21, "Discharging firearms-Generally," in addition to various State statutes, already prohibit the use of firearms or other dangerous weapons within the city. Proposed revisions to Sec. 46-22 prohibit the display of a firearm or other dangerous weapon on city property, which includes a city bus. State law prohibits possessing a concealed weapon, other than a handgun being carried pursuant to a permit, in any place other than one's own premises. A municipality has no authority to prohibit a person with a valid concealed handgun permit from carrying a concealed handgun on a city bus (the ordinance at issue recognizes this limitation and already exempts permittees from its prohibitions). Nor does a municipality have the authority to regulate possession of dangerous weapons on private property. Again, it should be noted though that a person who owns or controls private property may request that any person displaying or possessing a weapon leave the premises and, failure to do so would constitute the offense of trespass. Therefore, it is recommended that current Sec. 46-25 be deleted.

Sec. 46-26. "Prohibition on possession of firearms while under the influence of drugs or alcohol." This ordinance currently makes it unlawful for any person to possess or display a loaded firearm, or an unloaded firearm if ammunition is readily available, on city property, while the person's physical or mental faculties, or both, are appreciably impaired. A municipality's statutory authority to regulate firearms is not dependant upon whether or not the firearm is loaded, or whether or not the possessor is under the influence of an impairing substance. Sec. 46-21, "Discharging firearms-Generally" and proposed revisions to Sec. 46-22, would regulate the display and possession of firearms on city property as allowed by State law regardless of these factors. Furthermore, it should be noted that while a municipality has limited authority to prohibit a permittee from carrying a concealed weapon onto city property, State law prohibits a person from carrying a concealed handgun pursuant to a concealed handgun permit while the person has any alcohol or non-prescribed controlled substance remaining in his or her body. For these reasons, it is recommended that current Sec. 46-26 be deleted.

Sec. 46-27. "Prohibition on possession of firearms at polling places." This ordinance currently prohibits a person from carrying a firearm or other dangerous weapon into a polling place which is being used by the board of elections to conduct an election or referendum. To the extent the polling place is on city property, the possession of dangerous weapons would be regulated by the proposed revisions to Sec. 46-22. A municipality does not have the authority to regulate the possession of weapons on private property. For this reason, it is recommended that current Sec. 46-27 be deleted.

Sec. 46-28. "Penalties." This ordinance currently states that a violation of Article II "Weapons," is punishable by a maximum fine of \$500. and that the maximum term of imprisonment shall be 30 days. N.C.G.S. 14-4 provides that the violation of a local ordinance (except for those regulating parking and vehicle operations) is a Class 3 misdemeanor. The statute allows an ordinance to provide for a fine that is greater than \$50. but which is not in excess of \$500. The statute does not authorize a municipality to set the maximum term of imprisonment. The maximum term of imprisonment is set by statute in accordance with the structured sentencing guidelines for Class 3 misdemeanor offenses. For this reason, it is recommended that references to a maximum term of imprisonment be deleted from the ordinance.

### **Alternatives**

If the City Code sections regulating the display and possession of firearms are not amended, they will contain provisions which are in conflict with State law and those provisions will therefore be unenforceable. In addition, some authority to regulate firearms and other dangerous weapons within the City may remain unexercised.

### **Financial Impact**

There is no financial impact to the City by this agenda item.

### **SDBE Summary**

There are no SDBE requirements for this agenda item.

### **Attachments**

Attachment 1, Ordinance to Amend Provisions of the Durham City Code Regulating Discharge and Possession of Dangerous Weapons

Attachment 2, Chart Summarizing Effect of Proposed Amendments to Durham City Code  
Regulating Discharge and Possession of Dangerous Weapons